

11-2804-cr

United States Court of Appeals FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee,

-v.-

CHRISTIAN GATON,

Defendant - Appellant,

Jorge Abreu, Rudy Palma, Rafael Figueroa, AKA Rafael Beato, AKA Liro, AKA Camaron, Jose Hidalgo, AKA C.O. Shield 11440 Jose Rosario, AKA Jose Amaurys, Jimmy Ortiz, Pedro Ventura, Roberto Cristian Urena Almonte, AKA Villa Lona, AKA Christian Urena, AKA Roberto Almonte, Leocadio Hidalgo, AKA C.O. Leo, Leonardo Roque-Santana, AKA Luis M. Mendoza, Guillermo Delacruz, Quilvio Santana, AKA Mayimbe, Victor Diaz, AKA White Horse, Jeffrey Blake, Humberto Sanchez, AKA Chamo, Defendants.

ON APPEAL FROM A JUDGMENT OF THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

APPENDIX PART 4

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 UNITED STATES OF AMERICA

4 v. 02 Cr. 401 (KMW)

5 CRISTIAN GATON, Sentence
6 Defendant.

7 -----x

8 New York, N.Y.
9 June 29, 2011
10 12:15 p.m.

Before:

10 HON. KIMBA M. WOOD District Judge
11
12

13 APPEARANCES

14 PREET BHARARA
15 United States Attorney for the
16 Southern District of New York
17 DAVID M. RODY
18 Assistant United States Attorney

19 JOYCE LONDON
20 Attorney for Defendant

21 JORDAN FOX
22 Interpreter (Spanish)

23

24

25

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SOUTHERN DISTRICT REPORTERS, P.C.
(212) 805-0300

1 (Case called)

2 THE CLERK: Will counsel please state their
3 appearances.

4 MR. RODY: Good afternoon, your Honor. Dave Rody for
5 the government.

6 THE COURT: Good afternoon.

7 MS. LONDON: Joyce London for Mr. Gaton. Good
8 afternoon, your Honor.

9 THE COURT: Good afternoon. And good afternoon, Mr.
10 Gaton.

11 THE DEFENDANT: (Through the interpreter) Good
12 afternoon.

13 THE COURT: Ms. London, I understand that you and your
14 client have had an adequate opportunity to review the
15 pre-sentence report.

16 MS. LONDON: Yes, we have, your Honor.

17 THE COURT: You ask in your November 12, 2009, letter
18 for a number of corrections to the PSR. Do you know whether
19 all of those have been made? My paragraphing in my September
20 2009 PSR report is different from the paragraphing in your
21 November 12 letter, so I'm not sure.

22 MS. LONDON: Your Honor, it is my understanding at a
23 they were not made.

24 THE COURT: I will have them made.

25 Mr. Rody, do you want me to read what they are?

1 MR. RODY: No. I saw them in the letter and I didn't
2 have any objections to them. I had actually one myself, Judge,
3 which is totally minor and doesn't affect this defendant. I am
4 just trying to make sure that they didn't -- the latest PSR
5 that I have as well is I think what you said, Judge. I have
6 October 2009.

7 THE COURT: I do not have October 2009. Ms. London?

8 MS. LONDON: My most recent one has a sentence date of
9 October 2009.

10 THE COURT: It was prepared September 11, 2009, and
11 has a sentence date of October 21, 2009.

12 MR. RODY: We all have the same one, Judge.

13 MS. LONDON: Yes.

14 THE COURT: Fine. I'll have the changes made to that
15 one. Mr. Rody, do you want to look for another change you
16 have?

17 MR. RODY: A totally nonsubstantive as far as this
18 defendant is concerned, change. In this version, paragraph 14,
19 page 5, talks about named co-defendant José Hidalgo. It says
20 he was sentenced to 65 months. He was in fact sentenced to 300
21 months. He was subsequently in 2011, I believe February,
22 before Judge Daniels, re-sentenced pursuant to Rule 35 to 180
23 months. But his initial sentence was 300 months.

24 THE COURT: We'll make that change here.

25 MR. RODY: Thank you, Judge.

1 THE COURT: And we will communicate it to the
2 probation office.

3 MR. RODY: Thank you.

4 THE COURT: By Judge Daniels?

5 MR. RODY: Yes, Judge.

6 MS. LONDON: Your Honor, there is one other correction
7 that is in my sentencing memorandum but that was not in my
8 letter to the probation department, and that concerns the
9 release status on page 1 of the report, on the very first page
10 that is entitled "Pre-Sentence Investigation Report."

11 THE COURT: All right.

12 MS. LONDON: The pre-sentence report lists Mr. Gaton's
13 arrest date as November 15, 2005, but he was arrested on these
14 federal charges and the extradition warrant on July 17, 2005.
15 If we add that to the release status, then the burden of proof
16 will include in the calculation of the time that he must spend
17 in custody based on the July 15, 2005 date..

18 THE COURT: Any objection, Mr. Rody?

19 MR. RODY: If that's the date that he was first in
20 custody on these charges, we don't object to that. I don't
21 know whether Ms. London was saying July 17th or July 15th.

22 MS. LONDON: It's November 15th in the pre-sentence
23 report, and his arrest date in the Dominican Republic, which I
24 believe is actually in the body of the pre-sentence report, was
25 July 17th.

1 MR. RODY: Thank you.

2 THE COURT: I'll be glad to hear anything that you and
3 your client wish to say with respect to sentencing. I note
4 that I have recently received more letters on the defendant's
5 behalf, which I have read.

6 MS. LONDON: Thank you, your Honor. I have detailed a
7 lot of what I want the Court to take into consideration in my
8 sentencing memorandum to the Court, but I would like to
9 emphasize a few things.

10 First, Mr. Gaton's troubled childhood in the Dominican
11 Republic. His father was living already in this country, and
12 then his mother lived in this country for very lengthy periods
13 of time. During their absence and subsequent to that, there
14 was very traumatic and ongoing episodes in his life that
15 carried over to his teenage years in the form of alcoholism, by
16 the time he was an early teenager, in addition to problems in
17 school.

18 When he came to this country around age 19 or 20, he
19 already had serious alcoholism problems. When he started
20 working at the bodega in Washington Heights, cocaine addiction
21 was added to that mix. By age 20 he was essentially a lost
22 young man, very, very much in need of psychiatric help and
23 substance abuse help.

24 His bosses at that bodega and in this criminal
25 organization were ruthless, demanding individuals. They

1 tolerated no deviance from their orders. Mr. Gaton was the
2 lowest level worker in that organization. They made it clear
3 that if their orders weren't followed, the workers were hurt or
4 would possibly be killed.

5 That is the context in which the crime that he has
6 pled guilty to has set his role in this offense. He was not a
7 manager, organizer, supervisor, leader here. He didn't partake
8 in the planning of these terrible events. He was instructed
9 what he had to do.

10 THE COURT: You say he did not take part in the
11 planning of these events?

12 MS. LONDON: No, it is my understanding that he did
13 not, your Honor. It was planned, I believe, by Ventura and
14 Espinoza, and it was Mr. Gaton who was instructed by them and
15 accompanied by his brother-in-law to make sure that he did what
16 they had told him to do.

17 Also, your Honor, I am not and cannot, will not,
18 attempt to condone the conduct. This murder of Ms. Suozzo
19 should not have happened. But, and there is a but here, your
20 Honor, all of the things that your Honor has to take into
21 consideration at sentencing, these were not random. This was
22 not a random murder. The victim herself certainly played a
23 role in it.

24 Again, my sympathies are very much for the family in
25 that their children should not have had to grow up without a

1 mother. On the other hand, Ms. Suozzo managed a competing
2 bodega. She was essentially the equivalent of the Espinoza, I
3 believe, or the Pedro Ventura.

4 She had opened her bodega subsequent to the
5 Espinoza-Ventura bodega, and she, as I understand it, was
6 selling approximately 2 kilos of cocaine or crack per week.
7 She was a real competitor, and she actively solicited, tried to
8 solicit, customers away from the Espinoza- Ventura bodega by
9 telling people on the street to come to her bodega, her product
10 was better, they should try it. And the competition began.

11 Apparently, as I understand it, Espinoza warned her on
12 a number of occasions that she should move her bodega and she
13 should stop stealing his clients. But this was not a case
14 where you can go to court and try and enforce your rights, and
15 the antitrust provisions certainly don't apply here.

16 Ms. Suozzo, given the level that she was operating at,
17 would certainly have known that illegal activities, especially
18 narcotics trafficking, complaints and violations and grievances
19 and territorial wars are oftentimes and many times settled by
20 violence. Guns are part and parcel of this business.

21 So, by being in this business, she put her own family
22 at risk. She had to know that there was a possibility of
23 push-in robberies at her home, robberies in the bodega, or
24 violence for competition as to who would control that block or
25 that corner.

1 The other things that I would like to emphasize in
2 terms of the sentence that Mr. Gaton must serve is his health.
3 I understand the government's position is very different from
4 ours, but I think that there is no question that Mr. Gaton has
5 suffered in terms of his health in the MDC. There is no
6 question that he did have a number of falls and a concussion.
7 Going back to the episode where we couldn't take a plea because
8 he could not think straight based on the large quantities of
9 psychotropic medications, it is a reality.

10 I would also like to emphasize that Mr. Gaton has
11 considerable family support. He has relatives who are here
12 today: His father, his sister, brother-in-law, and family
13 friends. Tragically, his mother has died recently, since he
14 has been at the MDC. She had written a letter to the Court.
15 Your Honor does not have the original of that letter, as Mr.
16 Gaton had asked me if he could keep the original.

17 He understands first-hand what it is like to lose a
18 mother. He has lost his mother while in custody. He was not
19 able to say good-bye to her or attend her funeral. He has been
20 separated from his own children now for close to 5, 6 years,
21 and that separation is going to continue, so his children are
22 similarly victims of this whole unhappy episode.

23 I would also like the Court to consider his attempts
24 at cooperation. They have not resulted in a letter from the
25 government, so I'm certainly not asking for a downward

1 departure, but he has tried. The information that he provided
2 on Ventura, who was certainly one of the upper echelon leaders
3 in this offense and who planned and was part of ordering the
4 murders, is apparently still loose in the Dominican Republic.
5 It may be hard to catch him, because it is my understanding
6 that he has good contacts in high places there who will help
7 ensure that no arrest does take place.

8 Certainly Mr. Gaton has made very genuine efforts to
9 try and help himself, and he is continuing in those efforts.

10 Finally, with respect to a designation, your Honor, I
11 would ask first that Mr. Gaton be designated to a facility as
12 close as possible to New York. It also might be beneficial for
13 him, given his health situation and the continuing problems
14 that he has, especially with his back, disks, that there be a
15 medical evaluation at a federal medical center. And if he is
16 taken to a federal medical center and then transferred, that he
17 be placed at the closest possible facility that does have
18 wheelchair accessible facilities.

19 Thank you, your Honor.

20 THE COURT: Thank you.

21 Mr. Gaton, there is no requirement for you to speak,
22 but if you would like to speak now, I would be glad to hear
23 you. The interpreter can come to your side to assist you in
24 speaking.

25 THE DEFENDANT: Thank you for allowing me to express

1 myself. I would like to apologize to the government of the
2 United States because my activities disturbed the peace and
3 harmony that the United States people have paid for so many
4 sacrifices. I would like to ask the forgiveness from anyone
5 whom I harmed either directly or indirectly.

6 I thank everyone in this courthouse, especially your
7 Honor for her impartiality and her justice, and the prosecutors
8 as well for professionalism, and my attorney Ms. London for her
9 patience and her devotion. To my family as well for the
10 problems that I have caused them, and thank God for having
11 provided me with a chance to ask my mother for forgiveness in
12 time.

13 I recognize that I am a sinner. Since the beginning
14 of the world, we have all been sinners. As St. Marcos says, he
15 who apologizes from his heart will be forgiven, and we must
16 forgive to be forgiven. I hope that your sentence is just and
17 irreproachable. Thank you, your Honor.

18 THE COURT: Thank you very much.

19 Mr. Rody, would the government like to be heard?

20 MR. RODY: Yes, Judge. Thanks.

21 This is a difficult day, Judge. Every time someone is
22 sentenced for a murder, it's a difficult day, and it is one
23 that everybody here I know takes very seriously. It is a
24 difficult day most of all for the defendant and his family
25 because no matter what your Honor does, I expect he is going to

1 go away for a very long time. His family is going to be
2 without him for a very long time, his children are going to be
3 without him for a long time, and he, Mr. Gaton, did that to
4 them.

5 I want to try to treat this event with the solemnity
6 that it deserves, but I really do need to correct a few things
7 that Ms. London said, because there are some factual errors.

8 As we said in our letter to the Court of December 17,
9 2010, we are seeking a sentence at the highest end of the
10 guideline range here, which is something around 34½ years.
11 Frankly, I think given that everybody is free of the
12 constraints of the guidelines under Booker, your Honor could go
13 higher and it would be a reasonable and just sentence.

14 The murder that Mr. Gaton pleaded guilty to was a
15 particularly heinous murder. I have been doing this for 12½
16 years now, and it is one of the worst I've seen. He executed a
17 woman who was a mother of three. He fired 25 times from a
18 TEC-9 semiautomatic assault weapon, hit her at least 17 times.
19 I mean riddled this small woman's body with gunshots.

20 One of her sons, who I keep looking around to see if
21 he is here today, I have been in contact with over the years,
22 Michael Jimenez, was about 14 years old at the time, and he
23 grew up without his mother. To this day he is distraught about
24 it and frustrated and confused and doesn't know why his mother
25 was taken away from him.

I have read some of the letters that some of Mr. Gaton's family sent on his behalf, and her heartfelt letters. Like I said, this is a bad day for everybody. One of them in particular caught my eye. It was from Sharena Ovalles. There is a line toward the latter third of it that says, "I get sad every time I think of Alexa, Christian's daughter, because she's growing up without a father, without a role model to follow." That's what Michael Jimenez and his brothers had to endure when Cristian Gaton took away their mother.

A couple of things, some basic facts. Mr. Gaton very much did participate in the planning of this crime. There is no question that he was a lower-ranking person in the organization than Elvis Espinosa Ceballo and Pedro Ventura. They were the ones who owned the bodega and they are the ones who came up with the idea of murdering Ms. Suozzo or her brother.

They did not own a bodega. They owned a parking garage or parking lot that was nearby the bodega that Espinoza and Ventura owned on White Plains Road. I think Ms. London was confusing this with the second murder that Mr. Gaton committed, which was the murder of Damian Bautista on November 20th, 1994. Ms. Suozzo was murdered on November 6, 1994.

They were both murdered for the same reason. Essentially they were, at least to the minds of Espinoza and Ventura, stealing customers from their bodega on White Plains

1 Road. But with respect to Suozzo, her brother owned a parking
2 garage or parking lot nearby, and they were apparently selling
3 cocaine out of there. I don't know where Ms. London came up
4 with the figure of 2 kilos a week or something. It didn't come
5 from the government. But they were apparently selling cocaine
6 out of there.

7 The family of Ms. Suozzo has never admitted to us that
8 she was involved in selling drugs. They don't know, according
9 to the family members, why she was killed. It is our information
10 from our cooperating witnesses that she was involved in the
11 cocaine sales. But whatever, it's clear that Espinosa and
12 Ventura believed she was. In that business, as Mr. London
13 says, disputes are handled on the street with violence.

14 There were meetings about this, meetings involving
15 Espinosa and Ventura and Gaton and Urena, and we allege that in
16 the indictment there was at least one, if not more, planning
17 meetings involving Gaton when they sat down. I'm not saying it
18 was very lengthy or very detailed, but it included a few
19 essentials.

20 Urena was going to drive the car, Gaton was going to
21 be the shooter. They were going to use a TEC-9 that they had
22 gotten from another member of their criminal organization.
23 Those were details that were conveyed to Gaton. So I think it
24 is true that he did not come up with the idea, but he was
25 involved in the planning.

1 The second thing is this. He was not ordered to do
2 this, as Ms. London says, in the vein of some lower-ranking
3 person who was going to face some penalty if he didn't do it.
4 Gaton was actually not a member of the organization, based on
5 the information from our cooperating witnesses, really until
6 this murder. He was brother-in-laws with Urena, who had been
7 with these people for years, had been selling drugs with them
8 for years. Gaton very much wanted to join the organization.

9 We charged this as a murder in aid of racketeering in
10 the first instance under 18 U.S.C. Section 1959(a)(1). The
11 theory was, as the statute says, he did this in order to gain
12 entry to the organization. Urena proposed, let me use my
13 brother-in-law, and they said essentially, that sounds good to
14 us. So he wanted to do this to join in this profitable
15 narcotics organization that was selling a whole lot of cocaine
16 and also heroin and had been doing so for years and years.

17 Other things that are minor disputes. Again, I think
18 Ms. London was confusing this with the murder of Damian
19 Bautista. He and his brother did own another competing bodega
20 on White Plains Road. Suozzo, to my information, was never
21 warned by anyone. Damian Bautista was warned several times.
22 Suozzo's brother was apparently warned by the organization.

23 That addresses some of the factual disputes.

24 The reasons why we think a very high sentence is
25 warranted go to, and again I'll return to the nature of the

1 crime, it's particularly heinous, it was particularly cold, and
2 the victim was not some other gang leader or something. Our
3 information was yes, she was involved in the drug business, but
4 she was a mother of three.

5 The probation department, I would note for whatever
6 it's worth, has recommended a sentence at the high end of the
7 range, 405 months, which is not typical. They did in this
8 case.

9 As far as comparative sentences go and sentencing
10 disparity, your Honor sentenced Cristian Urena to 27 years, and
11 that was minus some time spent in state custody on a writ, etc.
12 Essentially, your Honor's sentence on this crime was 27 years.
13 I believe it would be an unwarranted sentencing disparity to
14 sentence Gaton to the same thing. He is worse on a couple of
15 levels.

16 Urena was the driver, Gaton was the shooter in two
17 murders for the organization. Of course, Urena is guilty of
18 those crimes, but he is not the shooter. I suppose a person
19 could have been dispatched with one gunshot. He shot her,
20 tried to shoot her, 25 times, hit her 17 times. That's one
21 thing about Urena.

22 One minor point. We don't object to a sentencing
23 credit that goes back to I guess July of '05. If he is in
24 custody as of that date, that's probably warranted.

25 To our mind, the government, Mr. Gaton received

1 several benefits here in taking this plea. We talk about them
2 in the letter, but I'll review them briefly. Number one and
3 most importantly, we made him a plea offer. We could have just
4 said there is no offer, you can go to trial, in which case we
5 are fully confident he would have gotten convicted. He would
6 then have a mandatory life sentence, and this proceeding could
7 have taken place a lot longer ago and wouldn't be this long.

8 He was charged with murder in aid of racketeering, two
9 counts of it, and I expect that he would have been convicted of
10 both of them. We gave him a plea offer and gave him the
11 opportunity to someday walk outside a free man. That's a
12 tremendous benefit. I think he will still get to do that with
13 a sentence at the high end of the range.

14 We also, in our mind, demonstrated leniency in
15 allowing him to plead guilty to only one count. We didn't make
16 him plead to the racketeering count, the narcotics conspiracy
17 count, the money laundering counts, the other 924(c) counts. It
18 was just 924(j).

19 And because we only made him plead guilty -- I say
20 made -- we only offered him a plea to one of the two murder
21 counts, that affected his guidelines because of the grouping
22 rules that your Honor is of course familiar with. His range
23 would have been I think at least one level if not two levels
24 higher if he had been required to plead guilty as part of the
25 agreement to both murders. He would have been starting at

1 probably 360 to life.

2 Of course, this was a negotiated disposition and the
3 government got some benefits out of this: An appellate waiver,
4 avoiding the risk of trial, etc. But I think at the end of the
5 day, Gaton really received many benefits.

6 THE COURT: The appellate waiver was a waiver of a
7 sentence within the sentencing guideline range?

8 MR. RODY: Correct, 327 to 405, Judge. I can check
9 that. 324 to 405. I had it in my mind as 27 because it's 27
10 years.

11 The final thing I want to address is we sort of
12 presaged them I guess in the December letter, and that is about
13 Mr. Gaton's medical condition and his attempts to cooperate.
14 We said this at the time. I understand that he was on a lot of
15 medication, and that may have been affecting his head. Our
16 information was the injuries were faked, he does not need to be
17 in a wheelchair, he is not really suffering from some severe
18 medical issue. The doctors have not found anything to be wrong
19 with him, as far as I understand it from all the medical
20 reports.

21 Also, the conclusion of the psychological tests was
22 that he is malingering or that he was malingering any mental
23 effects. So he was faking it. That caused everybody here,
24 probably me in particular, to go through a lot of unnecessary
25 work. That's part of our job, but it is aggravating to

1 everybody when it is a waste of time. It was also a waste of
2 time to the Court. I'm not speaking as me, I'm talking as a
3 representative of the government, of course.

4 The final thing is Mr. Gaton's attempts to cooperate.
5 He came in for one proffer session. Not a single iota of
6 anything he told the government has ever been used for any
7 purpose. Ms. London mentioned the fact that Ventura apparently
8 has contacts in high places in the Dominican Republic which
9 have prevented him from getting arrests. We agree. I think
10 that is the reason he hasn't been arrested; it's because of the
11 corrupt Dominican law enforcement and justice system.

12 We have gotten information about him over the years
13 from many different sources, and none of it has ever panned out
14 or led to his arrest. Of course, the government has no
15 obligation to use anybody's information and to give anybody a
16 benefit that way.

17 The final thing is I don't think his attempts to
18 cooperate cancel out much of anything in terms of his conduct
19 here. The fact that he was faking things, which I think is
20 demonstrated by the medical reports or at least the
21 psychological reports, really hurts his credibility as a
22 witness for any purpose. So even though maybe he will be able
23 to provide some piece of information someday that will lead to
24 someone's arrest, he has crippled himself as a witness because
25 of his prior conduct.

1 The final thing I would add is the talk of his family
2 support. Again, with the utmost sympathy for them, and Mr.
3 Gaton spoke eloquently on his own behalf, it is I would say a
4 little too much to hear that his family have been victims or
5 his daughter has been a victim of this whole affair.

6 Obviously, he has victimized people in the past.
7 Having talked about all of the drug dealing that the
8 organization did, bringing in tractor-trailers of hundreds of
9 kilograms of cocaine which was broken down and broken down and
10 broken down and sold who knows where, in what form, and in what
11 quantity, that causes also untold damage to untold people,
12 untold numbers of people.

13 Mr. Gaton has led a life of a lot of crime here and in
14 the Dominican Republic. The particular crime that he pled
15 guilty to was as bad as it gets in the drug murder business.
16 For that we think that he merits a sentence at the highest end
17 of the guideline range.

18 Thank you, Judge.

19 THE COURT: Do you wish to respond to any way, Ms.
20 London?

21 MS. LONDON: Your Honor, yes. With respect to the
22 probation department's recommendation of a guideline sentence
23 at the high end of the range, I would note that that
24 recommendation is based solely upon the information in the
25 pre-sentence report and did not consider any 3553(a) factors.

With respect to Mr. Urena's sentence of 27 years, although Mr. Urena was not the shooter, he was responsible for bringing a younger and more vulnerable individual into this. Mr. Gaton, I will accept the government's representation that he was present when some planning was done, but he was told what to do as opposed to suggesting what should be done. It has always been his belief that he had to do it.

With respect to Mr. Rody's blanket statement that Mr. Gaton was malingering, I do take objection to that. There is certainly in the report some indication that he may have exaggerated symptoms or presented some malingering, but they also gave diagnoses of alcohol dependence, cocaine abuse, and depressive disorder.

Some of his medical studies have shown that he has degenerative disk disease. He has compromised liver functioning as a result of his longstanding alcohol problems. There are things in the report, such as impressions of his mental status were notable for tearfulness, high levels of depressive thinking, moderate anxiety, poor tolerance for physical discomfort, possible malingering, which they even correlated to drug-seeking behavior.

All of these point to a man that does have psychological problems. To say that the fact that he is wheelchair-bound and all of this is a drama is an overstatement and is not an accurate representation of Mr. Gaton's status.

1 THE COURT: Thank you, Ms. London.

2 I begin, as I must, by calculating the advisory
3 sentencing guideline range. I agree with the parties that the
4 figures in the plea agreement is correct. Mr. Gaton's total
5 offense level is 40 and his criminal history category is II.

6 The nature and circumstances of the offense are very,
7 very grave. There are few crimes more heinous than the
8 shooting of a mother of three children in cold blood for money,
9 that is, for the prospect of entering a drug conspiracy. The
10 history and characteristics of Mr. Gaton are that he has a
11 prior felony conviction for criminal possession of a loaded gun
12 in 1996.

13 There is no question but that in order to reflect the
14 seriousness of the offense, promote respect for the law,
15 provide just punishment, to afford adequate deterrence, both
16 individual and general, and to protect the public from further
17 crimes of the defendant, a sentence at the highest end of the
18 advisory sentencing guideline range is appropriate. In fact,
19 in my view, a much higher sentence could be appropriate. But I
20 will honor the agreement between the parties. I know it is not
21 binding on me, but I understand that it was the result of
22 compromise that I will honor.

23 Please stand for sentencing, Mr. Gaton.

24 Can he stand?

25 MS. LONDON: He can push himself up, your Honor, but

1 not for a sustained period.

2 THE COURT: I'll assume he cannot stand.

3 Mr. Gaton, I sentence you to 405 months in custody.
4 You will be on supervised release for 5 years. I impose no
5 fine, because you don't have the money to pay a fine. I impose
6 the special assessment of \$100, which is mandatory.

7 The standard and mandatory conditions of release will
8 apply. In addition, you must obey the immigration laws and
9 comply with the directives of immigration authorities. You
10 must participate in a program approved by your probation
11 officer, which program may include testing to determine whether
12 you have reverted to using drugs or alcohol.

13 I authorize the release of available drug treatment
14 evaluations and reports to the substance abuse treatment
15 provider as approved by the probation officer. You will be
16 required to contribute to the costs of services rendered,
17 co-payment, in an amount to be determined by your probation
18 officer based on your ability to pay or the availability of
19 third-party payment.

20 You must participate in an alcohol aftercare treatment
21 program under a co-payment plan, which may include testing via
22 breathalyzer at the direction and discretion of the probation
23 officer.

24 You shall submit your person, residence, place of
25 business, vehicle, or other premises under your control to a

1 search on the basis that the probation officer has reasonable
2 belief that contraband or evidence of a violation of the
3 conditions of the release may be found. The search must be
4 conducted at a reasonable time and in a reasonable manner.
5 Failure to submit to a search may be grounds for revocation.
6 You must inform any other residents that the premises may be
7 subject to search pursuant to this condition.

8 If you are at liberty when your time in the custody of
9 the Bureau of Prisons is finished, you must report to the
10 nearest probation office within 72 hours of your release. You
11 will be supervised by the district of residence.

12 Are there charges to be dismissed?

13 MR. RODY: Yes, Judge. We would move that all
14 underlying indictments be dismissed.

15 THE COURT: They are dismissed.

16 Is there anything further before I read defendant his
17 appeal rights?

18 MR. RODY: There is just the matter of that credit,
19 Judge.

20 THE COURT: I will give him credit. The sentence I
21 impose of 405 months is imposed with credit for time served
22 back to July 17, 2005, the date upon which I am informed he was
23 arrested on these charges.

24 MR. RODY: Thank you, Judge.

25 THE COURT: I will recommend that he be placed in a

1 facility appropriate for his medical condition and that it be
2 as close as possible to New York city.

3 Mr. Gaton, you can appeal your conviction if you
4 believe that your guilty plea was somehow unlawful or
5 involuntary or if there is some other fundamental defect in the
6 proceedings that was not waived by your guilty plea. You also
7 have a statutory right to appeal your sentence under certain
8 circumstances.

9 However, a defendant may waive those rights as part of
10 a plea agreement, and you have entered into a plea agreement
11 which waives some or all of your rights to appeal the sentence
12 itself. Such waivers are generally enforceable. But if you
13 believe the waiver is unenforceable, you can present that
14 theory to the appellate court.

15 With few exceptions, any notice of appeal must be
16 filed within 10 days of judgment being entered in your case.
17 If you are not able to pay the cost of an appeal, you may apply
18 for leave to appeal in forma pauperis. If you request, the
19 clerk of the court will prepare and file a notice of appeal on
20 your behalf.

21 I'd like to add one point to the sentencing, one
22 issue. Because the question of the defendant's competency was
23 raised and challenged by defense counsel, I note on the record
24 that I have reviewed the forensic evaluation by the mental
25 health department at the federal medical center at Butner,

1 North Carolina, signed by Maureen Riordan, staff psychologist,
2 and Robert Lucking, staff psychologist.

3 I accept that he is capable of communicating with his
4 lawyer meaningfully, attending adequately to court proceedings,
5 and showing proper courtroom behavior if he chooses. I accept
6 their conclusion that there is no support in the available
7 records for the presence of gross cognitive deficit or serious
8 mental illness that would interfere with his ability to learn
9 and retain any novel legal terms as well as any events
10 pertaining to the charges as reconstructed for him. I accept
11 the psychologists' view that the defendant was malingering when
12 claiming to be mentally impaired.

13 Thank you, counsel. We are adjourned.

14 (Adjourned)

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Criminal Notice of Appeal - Form A

NOTICE OF APPEAL

United States District Court

Southern District of New York

Caption:
USA v.

Gaton

Docket No.: S4 02 Cr 401
Hon. Kimba M. Wood
(District Court Judge)

U.S. DISTRICT COURT	
FILED	
JUL 18 2011	
D.S.	
S.D. OF N.Y.	

Notice is hereby given that Defendant Christian Gaton appeals to the United States Court of Appeals for the Second Circuit from the judgment other entered in this action on June 29, 2011 (specify) (date)

This appeal concerns: Conviction only Sentence only Conviction & Sentence Other

Defendant found guilty by plea trial N/A

Offense occurred after November 1, 1987? Yes No N/A

Date of sentence: 6/29/2011 N/A

Bail/Jail Disposition: Committed Not committed N/A

Appellant is represented by counsel? Yes No If yes, provide the following information:

Defendant's Counsel: Joyce C. London, Esq

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Signature